

27

4T ✓

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION : UNION COUNTY  
CRIMINAL - 97-02-00123

STATE OF NEW JERSEY,

vs.

MARVIN MATHIS,

Defendant,

Steno-Graphic Transcript  
of  
Trial Proceedings

Place: Union County Courthouse  
2 Broad Street,  
Elizabeth, New Jersey,

Date: JUNE 11, 1998 - MORNING SESSION

B E F O R E:

HON. JOHN F. MALONE, J.S.C., & JURY

TRANSCRIPT ORDERED BY:

OFFICE OF THE PUBLIC DEFENDER  
Appellate Section

A P P E A R A N C E S:

WILLIAM KOLANO, ESQ.  
Assistant Prosecutor, Union County,  
For the State,

WALTER E. FLORCZAK, ESQ.  
(Florczak & Florczak)  
Attorney for the Defendant,

B. PETER SLUSAREK, C.S.R., XI00291  
Official Court Reporter  
Union County Courthouse  
Elizabeth, New Jersey, 07207

" 2T "

4T ✓

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION : UNION COUNTY  
CRIMINAL - 97-02-00123

STATE OF NEW JERSEY,

vs.

MARVIN MATHIS,

Defendant,

: Stenographic Transcript  
: of  
: Trial Proceedings  
:  
:  
:  
:  
:

Place: Union County Courthouse  
2 Broad Street,  
Elizabeth, New Jersey,

Date: JUNE 11, 1998 - MORNING SESSION

B E F O R E:

HON. JOHN F. MALONE, J.S.C., & JURY

TRANSCRIPT ORDERED BY:

OFFICE OF THE PUBLIC DEFENDER  
Appellate Section

A P P E A R A N C E S:

WILLIAM KOLANO, ESQ.  
Assistant Prosecutor, Union County,  
For the State,

WALTER E. FLORCZAK, ESQ.  
(Florczak & Florczak)  
Attorney for the Defendant,

B. PETER SLUSAREK, C.S.R., X100291  
Official Court Reporter  
Union County Courthouse  
Elizabeth, New Jersey, 07207

	WITNESSES INDEX	
1	(MORNING SESSION)	PAGE
2	THOMAS KOCZUR	03
3	Direct By Mr. Kolano	87
4	Cross By Mr. Florczak	103
5	Redirect By Mr. Kolano	119
6	Recross By Mr. Florczak	
7	(AFTERNOON SESSION)	
8	MIGDALIA HERNANDEZ	139
9	Direct By Mr. Kolano	145
10	Cross By Mr. Florczak	
11	JOHN FURDA	158
12	Direct By Kolano	163
13	Cross By Mr. Florcak	
14	MIGDALIA HERNANDEZ	166
15	Direct By Mr. Kolano	171
16	Cross By Mr. Florczak	
17	APRIL DIGGS	175
18	Direct By Mr. Kolano	197
19	Cross By Mr. Florczak	
20		
21		
22		
23		
24		
25		

1 JUNE 11, 1998 - MORNING SESSION

2 THE COURT: Mr. Kolano, ready?

3 MR. KOLANO: I am.

4 Before we bring the jury out, I do have items of  
5 evidence laid out. Mr. Florczak and I have conferred. He has  
6 no objection to them being laid out and being shown to the jury  
7 immediately.

8 Yes, I am prepared.

9 THE COURT: Mr. Florczak, ready to go?

10 MR. FLORCZAK: Yes, your Honor.

11 THE COURT: Okay. Let's bring the jurors out into the  
12 box.

13 (Jury seated in the jury box in the courtroom.)

14 THE COURT: Good morning, ladies and gentlemen.

15 Mr. Kolano, your next witness.

16 MR. KOLANO: Thomas Koczur.

17 T H O M A S K O C Z U R

18 Sworn as a witness and testified as follows:

19 DIRECT EXAMINATION BY MR. KOLANO:

20 Q. Sir, by whom are you employed?

21 A. By the City of Elizabeth.

22 Q. In what capacity?

23 A. Presently I am detective assigned to detective bureau.

24 Q. How long have you been a detective?

25 A. Approximately eleven years.

KOCZUR - DIRECT BY KOLANO

4

1 Q. How many total years of law enforcement experience do  
2 you have?

3 A. Twenty-one.

4 Q. And were you the assigned case detective to  
5 investigate the murder of Antonio Saraiva that happened January  
6 22nd, 1996?

7 A. Yes, I was.

8 Q. And at approximately eleven p.m. on that evening did  
9 you respond to 709 East Jersey Street?

10 A. Yes, sir, I did.

11 Q. Approximately how long were you at this scene?

12 A. Approximately twenty five minutes.

13 Q. And were you detailed to go somewhere from the scene?

14 A. Yes, I was.

15 Q. And where were you detailed to go?

16 A. That was at the Elizabeth General Medical Center West.

17 Q. And did you speak to people there?

18 A. Yes, I did.

19 Q. Who did you speak to?

20 A. I spoke to Susan Saraiva, the daughter of the deceased;  
21 Alice Saraiva, daughter of the deceased; and I had a very brief  
22 conversation with Antonia Saraiva, the wife of the deceased.

23 Q. And from the hospital where did you respond?

24 A. At that time I went to the detective bureau.

25 Q. Did you start conducting interviews with witnesses at

KOCZUR - DIRECT BY KOLANO

5

1 that point?

2 A. Yes, sir, I did.

3 Q. And did you participate in the taking of statements on  
4 that evening from people who purported to be witnesses?

5 A. Yes, sir.

6 Q. And as a result of taking some statements did Superior  
7 Court judge subsequently authorize some arrest complaints for  
8 Jameel Miller?

9 A. That is correct.

10 Q. And also a Mr. Green?

11 A. Yes.

12 Q. And one of those -- Were either of those persons  
13 arrested and taken into custody?

14 A. No, sir.

15 Yes, sir. There was one. Yes.

16 Q. And was it subsequently learned that neither one had  
17 anything to do with the killing?

18 A. That is correct.

19 Q. And were the charges immediately dropped?

20 A. Yes, sir.

21 Q. One of the persons was actually never even arrested on  
22 the charge?

23 A. That is correct.

24 Q. Did you continue in your investigation?

25 A. Yes, I did.

KOCZUR - DIRECT BY KOLANO

1 Q. Did there come a point in time on January 24th, 1997  
2 that you came to meet a person identified as Sharlama Brooks?

3 A. Yes, I did.

4 Q. What were the circumstances of you coming into contact  
5 with Miss Brooks?

6 A. On that date at approximately ten a.m. Detective Lieutenant  
7 Gary Lewis informed me that he received information that  
8 Sharlama Brooks was a possible witness in this case.

9 Q. And where is it you first met Sharlama Brooks?

10 A. In the hallway of detective bureau on the second floor.

11 Q. Did you participate in an interview of her?

12 A. Yes, I did.

13 Q. And did you take a statement from her?

14 A. Yes, I did.

15 Q. Was she accompanied by anyone?

16 A. She was accompanied by a school counselor named Janice  
17 Sutton.

18 Q. Was Miss Sutton with her the entire time?

19 A. Yes, sir.

20 Q. And based on the information that she provided to you  
21 did your investigation focus on another individual?

22 A. Yes, sir.

23 Q. And who did your investigation focus upon?

24 A. Marvin Mathis.

25 Q. And was any --

KOCZUR - DIRECT BY KOLANO

1 Do you see Marvin Mathis in the courtroom today?

2 A. Yes, I do.

3 Q. Please identify him.

4 A. He is the gentleman seated to my left. He is wearing a  
5 white shirt, brown pants, a like brownish gray tie with yellow  
6 squares.

7 THE COURT: Indicating the defendant.

8 Q. And what was done on further investigation as it  
9 related to Marvin Mathis after you took your formal statement  
10 from Sharlama Brooks?

11 A. At that time arrangements were made to have Marvin Mathis  
12 brought to the police department.

13 Q. At that time were there actual police officers  
14 assigned to the high school in plain clothes capacity?

15 A. Yes, sir.

16 Q. Was that part of what you commonly referred to as  
17 community policing function?

18 A. Yes, sir.

19 Q. And when Mr. Mathis was brought to police  
20 headquarters, please explain to the jury the circumstances of  
21 you first seeing him?

22 A. It was approximately 11:15 a.m. And I was informed that  
23 Marvin Mathis was in the detective bureau. At that time I left  
24 the room, where I was with Sharlama Brooks, I walked down the  
25 hallway and entered the conference room. At that time that's



KOCZUR - DIRECT BY KOLANO

1 the first time that I have ever seen Marvin Mathis. He was  
2 seated in a chair in the conference room, not in handcuffs.

3 Q. Had he been placed under arrest?

4 A. No.

5 Q. Did you say anything to him?

6 A. At that time I advised him of the investigation that was  
7 being conducted, and that he was a principal suspect in this  
8 particular case, and I advised him not to say a word.

9 Q. Were you aware of his age at that time?

10 A. Yes, I was.

11 Q. And he was fifteen?

12 A. Yes.

13 Q. Why did you tell him not to say anything at that time?

14 A. I didn't have a legal right to start asking him any  
15 questions until either he had a parent or guardian present.

16 Q. Did you explain that to him, that you would be making  
17 efforts to get either parent or guardian?

18 A. Yes, I did.

19 Q. Did you ask him questions to identify a parent or  
20 guardian?

21 A. Yes, I did.

22 Q. And who did he tell you his parent or guardian was?

23 A. Linda Mathis.

24 Q. Did he tell you how you can get in contact with Miss  
25 Mathis?

KOCZUR - DIRECT BY KOLANO

9

1 A. Yes, he did.

2 Q. Did you either on your own or direct or request of  
3 other detective to reach out for Miss Mathis while you  
4 continued your formal statement taking?

5 A. I requested Lieutenant Lewis to handle that for me.

6 Q. To your knowledge, did he do that?

7 A. Yes, he did.

8 Q. And was the defendant's mother, Linda Mathis, brought  
9 to police headquarters?

10 A. Yes, she was.

11 Q. And did you have an occasion to speak with her orally  
12 either upon her arrival or upon the conclusion of you taking  
13 the statement?

14 A. Upon her arrival I met with her.

15 Q. And tell me about the discussion you had with Miss  
16 Mathis?

17 A. I explained to her that her son was a potential suspect in  
18 a homicide that occurred on 709 East Jersey Street. She was  
19 familiar with the homicide. However, she was very cooperative  
20 with this detective.

21 Q. And did you explain to her the procedures that would  
22 be followed.

23 A. Yes, I did.

24 Q. Tell us generally what you explained to her as to the  
25 procedures and what your intentions were at that time.

KOCZUR - DIRECT BY KOLANO

10

1 A. I explained to her that in front of her son I wanted to  
2 read him his rights, read her her rights, so that they both  
3 understood exactly what was going on.

4 Q. When you say you read her her rights, was she a  
5 suspect?

6 A. No.

7 Q. And where did this conversation take place with the  
8 defendant's mother?

9 A. Right outside the conference room right by the receptionist  
10 desk.

11 Q. Did you then thereafter read the rights to the  
12 defendant with his mother present?

13 A. We, Linda Mathis and I went from reception area and then  
14 entered the conference room where Marvin Mathis was seated.

15 Q. Were there other detectives?

16 A. Yes, there were.

17 Q. Who was there?

18 A. Detective Lieutenant Gary Lewis and Detective John Furda  
19 from Union County Prosecutor's office.

20 Q. I see today you are in a jacket and tie or what we  
21 commonly refer to as plain clothes. Were you in plain clothes  
22 at that time?

23 A. Yes, I was.

24 Q. And your assignment as a detective is that plain  
25 clothes assignment?

KOCZUR - DIRECT BY KOLANO

1 A. Yes, sir.

2 Q. Is the same true, to your knowledge, of Detective  
3 Lieutenant Gary Lewis and Detective John Furda?

4 A. That is correct.

5 Q. Was everybody in plain clothes that day?

6 A. Yes, sir.

7 Q. Any guns or weapons displayed?

8 A. Not to my knowledge.

9 Q. When you entered the conference room was Mr. Mathis  
10 handcuffed or restrained in any way?

11 A. No, he was not.

12 Q. Please explain to me the procedure once you entered  
13 the conference room with the defendant's mother, what you did  
14 regarding Miranda or his rights?

15 A. After entering the conference room I sat at the head of the  
16 table, and to my right was Linda Mathis, and to her right was  
17 Marvin Mathis. At that time I used an Elizabeth Police  
18 Department Miranda sheet, and I explained to them what the  
19 sheet was. With that I read each one of the rights out loud  
20 and asked them if they understood each right. If Linda Mathis  
21 understood it and Marvin Mathis understood, for Marvin to place  
22 his initials after each sentence on that line.

23 Q. Now, sir, prior to you doing that did you take a  
24 written statement from Mrs. Mathis?

25 A. Yes, sir.

KOCZUR - DIRECT BY KOLANO

1 Q. And what was your purpose in taking a written  
2 statement from the defendant's mother prior to you even  
3 questioning the defendant?

4 A. Sir, I believe the written statement from Mrs. Mathis was  
5 taken after the statement of Marvin.

6 Q. I am showing you what has been marked S-1 for  
7 identification. I ask you to look at it and indicate whether  
8 or not you recognize that.

9 A. Yes, I do.

10 Q. And what is that?

11 A. This is the Elizabeth Police Department advisement of  
12 constitutional rights form. This is the one I used on 1/24  
13 with Linda Mathis and Marvin Mathis.

14 Q. As it relates to the very first right there, please  
15 demonstrate for the jury how you advised the defendant of his  
16 rights in the presence of his mother?

17 A. You have a right to remain silent. Do you understand this  
18 right?

19 Q. What did the defendant say when you read that to him?

20 A. Both him and his mother both indicated to me they  
21 understood that right.

22 Q. What did you do to memorialize the fact that the  
23 defendant indicated he understood that right?

24 A. I asked them to place their initials right after that  
25 sentence where it has an indication.

KOCZUR - DIRECT BY KOLANO

13

1 Q. Do you understand this right? Question mark. And  
2 then there is a line and there are initials MM there?

3 A. Yes.

4 Q. Who put those initials there?

5 A. Marvin Mathis.

6 Q. Now, there are four other rights in addition to the  
7 one you read. Is that correct?

8 A. Yes, sir.

9 Q. And did you read the other four the same way that you  
10 read the first one?

11 A. Yes, I have.

12 Q. Did you follow the same procedure with the other four  
13 rights as you did the first one?

14 A. Yes, sir, I have.

15 Q. There are initials after Do you understand, four  
16 times. Whose initials are those?

17 A. Marvin Mathis.

18 Q. And who put them there?

19 A. Marvin Mathis.

20 Q. Did you witness that?

21 A. Yes, I did.

22 Q. Did you use any force, threats, or coercion to have  
23 him put those initials there?

24 A. No, sir, I did not.

25 Q. There is a waiver portion on that. Would you please

KOCZUR - DIRECT BY KOLANO

1 demonstrate for the jury how you advised the defendant of his  
2 waiver rights?

3 A. I read this aloud to them: I have read this statement of  
4 my rights, and I understand what my rights are. I am willing  
5 to make a statement, answer questions. No promises or threats  
6 have been made to me, no pressure or coercion of any kind has  
7 been used against me.

8 Q. And did Mr. Mathis indicate he was willing to speak  
9 with the police?

10 A. Yes.

11 Q. And did his mother also indicate she gave her consent  
12 to that?

13 A. Yes.

14 Q. And was Marvin Mathis' mother present the entire time  
15 during this procedure that you are outlining?

16 A. Yes.

17 Q. Were any force, threats, or coercion used on the  
18 defendant's mother Linda Mathis?

19 A. No.

20 Q. There is a signature here. Whose signature is that?

21 A. Marvin Mathis.

22 Q. Did you personally observe him put that signature  
23 there?

24 A. Yes, I did.

25 Q. There is a signature right below that as a witness to

KOCZUR - DIRECT BY KOLANO

1 Marvin Mathis' signature. Whose signature is that?

2 A. Linda Mathis.

3 Q. That was the defendant's mother?

4 A. Yes.

5 Q. Did you witness her put that signature there right  
6 after her son signed?

7 A. Yes.

8 Q. Who was the advising officer of these rights?

9 A. I was.

10 Q. Whose signature appears there?

11 A. Mine.

12 Q. And there are two other signatures on that form.  
13 Whose are they?

14 A. Detective Lieutenant Gary Lewis and Detective John Furda.

15 Q. Please explain what role, if any, Detective Lewis and  
16 Detective Furda had in this procedure, if any?

17 A. Detective Lewis was my superior, and he was just in the  
18 room to assist us in anything we may need. And Detective John  
19 Furda was my partner assigned to me from Union County  
20 Prosecutor's office.

21 Q. What is the starting time, what is the date that this  
22 was done on?

23 A. 1/24/96.

24 Q. And what is the starting time of these rights?

25 A. 12:07.



KOCZUR - DIRECT BY KOLANO

1 Q. And ending time of these rights?

2 A. 12:09.

3 Q. Did you wear a watch at that point in time?

4 A. No, sir.

5 Q. Do you wear a watch today?

6 A. No, sir, I do not.

7 Q. Do you know, then, where you would have gotten the  
8 times from?

9 A. Either somebody inside the room had a watch, or I just  
10 stuck my head out the door and looked at the clock on a wall of  
11 headquarters. I don't remember how I got the time, sir.

12 Q. Now, after you advised the defendant of his rights,  
13 with his mother there, they indicated they understood their  
14 rights and they would waive the rights and talk to you, did you  
15 conduct an oral interview of Mr. Mathis?

16 A. Yes, I did.

17 Q. When I say oral interview, conversation back and forth  
18 between the two of you?

19 A. Yes, sir.

20 Q. And during this oral interview, did you subsequently  
21 make a report?

22 A. Yes, I did.

23 Q. I am going to ask you some questions. If you need to  
24 refer to your report just please advise everyone in court that  
25 you are referring to your report.

KOCZUR - DIRECT BY KOLANO

1 A. Yes, sir.

2 Q. Please tell us the nature of the oral interview that  
3 you had with the defendant.

4 Did you tell him what he was accused of?

5 A. Yes, sir.

6 Q. And what was his reaction to that?

7 A. At that time he became extremely nervous, and he denied  
8 having any involvement in this homicide, stating at the time of  
9 this homicide and shooting he was in the area of Third Street  
10 in Elizabeth, or with his girlfriend.

11 Q. And at that point in time you already knew his  
12 girlfriend to be Sharlama Brooks?

13 A. Yes.

14 Q. At that point in time had you advised him that you had  
15 already spoken to Sharlama Brooks?

16 A. No, sir.

17 Q. Why is that?

18 A. I wanted to see if he was going to be truthful with me.

19 Q. And please tell us the remainder of the nature of this  
20 oral interview as it proceeded with the defendant Marvin  
21 Mathis.

22 A. Approximately halfway during the interview I advised him  
23 that Sharlama Brooks had given us a statement in regards to him  
24 not being with her at the time of this robbery and shooting.  
25 At that time he became very angry, and he called Sharlama

KOCZUR - DIRECT BY KOLANO

1 Brooks a liar. When asked why Sharlama Brooks was a liar, he  
2 would have no answer for that.

3 Also during this interview he had several inconsistencies  
4 of the story, of his whereabouts, as to where he was during the  
5 shooting, and he became angry with this detective and Detective  
6 Furda when we tried to bring these inconsistencies out.

7 Q. Did anyone else point out those inconsistencies?

8 A. Also his mother brought inconsistencies, and then he became  
9 angry with her.

10 Q. And after you had pointed out what Sharlama Brooks had  
11 already said about not willing to be an alibi, and that his  
12 story had these inconsistencies, and after he became angry with  
13 you, the detective, and his mother, did he make a request?

14 A. Yes, he did.

15 Q. What was his request?

16 A. He wanted his mother to leave the room.

17 Q. Did you find that unusual based on your experience?

18 A. No, sir.

19 Q. Why?

20 MR. FLORCZAK: Judge, I object. I don't see what  
21 happens on other occasions makes a difference.

22 THE COURT: Sustained.

23 Q. Did you honor the defendant's request to have his  
24 mother leave the room?

25 A. Yes, I did.

KOCZUR - DIRECT BY KOLANO

19

1 Q. And did the defendant then tell you something or  
2 explain to you why he wanted his mother to leave the room?

3 A. Yes, he told me something.

4 Q. Please tell us what he said.

5 A. At that time he told me he was present at the scene of this  
6 homicide, and that he was walking with a man named Antwan, a  
7 scuffle broke out, and man was shot.

8 Q. Did he, did he or you then indicate that his mother  
9 should return to the room?

10 A. I brought his mother back into the room.

11 Q. Did he indicate to you why he wanted his mother to  
12 leave the room before he made these comments?

13 A. He had difficulty saying that he was involved in front of  
14 his mother initially.

15 Q. Did you speak to him about what he admitted to you and  
16 that you were going to bring his mother back in and he was  
17 going to be asked to repeat that?

18 A. Yes.

19 Q. When his mother came back in did he repeat his  
20 involvement in this offense.

21 A. Yes.

22 Q. And did his mother continue to stay in the room  
23 throughout the interview?

24 A. From time to time she was outside the room.

25 Q. For the majority of the interview was she present in

KOCZUR - DIRECT BY KOLANO

1 the room?

2 A. Yes.

3 Q. Now, did anything inappropriate happen to Mr. Mathis  
4 while his mother was outside the room?

5 A. No.

6 Q. Was his mother there whenever the defendant requested  
7 that she leave the room or willingly leave the room?

8 A. Yes.

9 Q. Now, you indicated the defendant mentioned that he was  
10 involved with Antwan Harvey in this offense. At that point in  
11 time did he ever mention the name April Diggs or Renee Diggs?

12 A. Sir, no.

13 Q. Did he mention by name or by general description  
14 somebody else who was involved?

15 A. Yes.

16 Q. Please tell us about that?

17 A. He described two people: One person by the name Antwan,  
18 and the other person boy from Carteret possibly nick named Boz.

19 Q. Was he able to identify this person from Carteret  
20 other than Boz?

21 A. Yes, he was.

22 Q. What did he say?

23 A. Later on that day he identified Antwan Harvey as the person  
24 who was there involved in the shooting and homicide.

25 Q. Well, did he say at that point in time, did he give

KOCZUR - DIRECT BY KOLANO

1 you any other description of Boz that you would be able to  
2 locate Boz?

3 A. No.

4 Q. Did he know what Boz's relationship was to Antwan  
5 Harvey, if any, at that point in time?

6 A. No.

7 Q. Now, what did he say that this Boz or this other  
8 person and Antwan did during this oral interview?

9 A. They met up in the area of Third Street in Elizabeth, and  
10 that they were going to take a walk, and that they were going  
11 to look to rob someone.

12 After walking up Court Street, by Seventh and East Jersey  
13 Street, they were going to rob an individual getting inside a  
14 car. However, this individual was moving too fast, and they  
15 decided not to do that robbery.

16 Q. And at this point in his oral interview he was  
17 indicating it was Antwan Harvey and Boz?

18 A. Yes.

19 Q. He was indicating that he was just with them?

20 A. Yes.

21 Q. Now, at some point in time the oral interview ends  
22 with Mr. Mathis?

23 A. Yes.

24 Q. And prior to you --

25 Did you subsequently take an initial written statement from

KOCZUR - DIRECT BY KOLANO

1 Mr. Marvin Mathis?

2 A. Yes, I did.

3 Q. Prior to that did you take a statement from Miss Linda  
4 Mathis?

5 A. Yes.

6 Q. What was your purpose in asking his mother to provide  
7 a statement first?

8 A. I wanted to make sure that if ever it came to court that  
9 there was no question in anybody's mind that Linda Mathis and  
10 Marvin Mathis both knew what was going on that day.

11 MR. KOLANO: Your Honor, I am going to have a document  
12 previously marked D-1 at a pretrial hearing now marked S-44.

13 THE COURT: S-44 for identification.

14 (S-44 marked for identification.)

15 MR. FLORCZAK: Which one is that?

16 MR. KOLANO: Statement of Linda Mathis.

17 Q. I am going to show you what now been marked S-44 for  
18 identification, and ask you to look at it. Do you recognize  
19 that?

20 A. Yes, sir, I do.

21 Q. What is that?

22 A. This is a copy of the typed written statement provided by  
23 Linda Mathis on 1/24/96.

24 Q. Who was the detective this statement was given to?

25 A. It was me.

KOCZUR - DIRECT BY KOLANO

1 Q. There is a name here L. Martinez. Would you please  
2 tell us who that is?

3 A. Lydia Martinez is the typist.

4 Q. Did she type the statement?

5 A. Yes, she did.

6 Q. And is this statement a -- is it verbatim as to every  
7 answer that Miss Mathis gave?

8 A. Yes.

9 Q. What is the start time of that statement?

10 A. 1:45 p.m.

11 Q. On what date?

12 A. That was 1/24/96.

13 Q. And approximately exactly how many pages is that  
14 statement?

15 A. Two.

16 Q. At the end of that statement there appears a signature  
17 here. Whose signature is that?

18 A. Linda Mathis'.

19 Q. Under that whose signature?

20 A. My signature.

21 Q. And to the left, who provided the oath?

22 A. Lydia Martinez.

23 Q. She is a notary?

24 A. Yes, she is.

25 Q. Was Linda Mathis cooperative in providing the



KOCZUR - DIRECT BY KOLANO

1 statement?

2 A. Yes.

3 Q. Did there come a point in time --

4 Well, you indicated there came a point in time when Marvin  
5 Mathis gave a statement?

6 A. Yes.

7 Q. And was his mother present during the entire typed  
8 statement?

9 A. Yes.

10 Q. Showing you what has been marked S-2 for  
11 identification. I ask you to look at it and indicate whether  
12 or not you recognize that.

13 A. This is the typewritten sworn statement given by Marvin  
14 Mathis on 1/24/96.

15 Q. What time does that written statement begin?

16 A. 2:30 p.m.

17 Q. Who is the statement given to?

18 A. Arlene McDonough.

19 Q. And who was the detective?

20 A. I was.

21 Q. Who was Arlene McDonough?

22 A. She is also a typist.

23 Q. Civilian typist in the police department?

24 A. Yes, sir.

25 Q. And are all of the words that Marvin Mathis spoke

KOCZUR - DIRECT BY KOLANO

1 during this statement contained on this statement?

2 A. Yes.

3 Q. I am going to ask you, detective, to look at the  
4 bottom of each page and indicate who, whose initials those  
5 were?

6 A. Marvin Mathis'.

7 Q. And they are on the bottom of each page?

8 A. Yes, sir.

9 Q. And do you know why they are at the bottom of each  
10 page?

11 A. So this way Marvin Mathis and both his mother can read the  
12 statement, understand it. If there is no corrections, if it's  
13 truthful, they are asked, Marvin Mathis was asked to place his  
14 initials at the bottom of each page.

15 Q. Sir, I am going to ask you to slowly and carefully  
16 read that statement indicating where there is a question and  
17 where there is an answer.

18 A. "Question: Marvin, I am detective Thomas Koczur of the  
19 Elizabeth Police Department, and I am investigating a homicide  
20 which occurred on 1/22/96.

21 "Before I ask you any questions, are you willing to answer  
22 them truthfully and to the best of your knowledge?

23 "Answer: Yes.

24 "Question: Do you read and write English.

25 "Answer: Yes.

KOCZUR - DIRECT BY KOLANO

1 "What is the extent of your education?

2 "Answer: 10th.

3 "Question: Are you under the influence of alcohol  
4 or narcotics at this time?

5 "Answer: No.

6 "Question: Do you need glasses to read?

7 "Answer: No.

8 "Question: Are you under the care of a doctor at  
9 this time?

10 "Answer: No.

11 "Question: Where are you a student at?

12 "Answer: Jefferson High.

13 "Question: Earlier this day were you transported  
14 from your school and brought to the Elizabeth Police  
15 Department?

16 "Answer: Yes.

17 "Question: Did you come here upon your own free  
18 will?

19 "Answer: Yes.

20 "Question: When you came to the police department  
21 did I introduce myself to you and tell you the investigation I  
22 was conducting?

23 "Answer: Yes.

24 "Question: And that was the shooting and robbery of  
25 a store owner on East Jersey Street in Elizabeth, is that

KOCZUR - DIRECT BY KOLANO

1 correct?

2 "Answer: Yes.

3 "Question: Did I then ask you not to speak to this  
4 detective until I had your mother present?

5 "Answer: Yes.

6 "And you were not asked any questions in regard to  
7 this, is that correct?

8 "Answer: Yes.

9 "Question: A short time later you were brought from  
10 an interview room and placed in a conference room of the  
11 detective bureau, is that correct?

12 "Answer: Yes.

13 "Question: Who was in the room at that time?

14 "Answer: My mother, you, and two other detectives.

15 "Question: Did I then -- excuse me.

16 "Did I again in the presence of your mother inform  
17 you of the investigation that I was going to conduct?

18 "Answer: Yes.

19 "Question: And I advised you of your constitutional  
20 rights, is that correct?

21 "Answer: Yes.

22 "Question: And your mother witnessed this, is that  
23 correct?

24 "Answer: Yes.

25 "Question: Did you understand your rights?

KOCZUR - DIRECT BY KOLANO

"Answer: Yes.

"Question: Do you still understand your rights?

"Answer: Yes.

"Question: Do you wish to proceed with this investigation by giving a typewritten statement?

"Answer: Yes.

"Question: On 2/22/96 were you in the area of Third Street and Bond Street?

"Answer: Yes."

MR. KOLANO: 2/22 or 1/22?

A. I am sorry. 1/22/96.

Q. Please continue.

A. "Question: About what time was that?

"Answer: Six.

"Question: Did you eventually meet up with one of your friends?

"Answer: Yes.

"Question: What was your friend's name?

"Question: Did you eventually get together with Antwan?

"Answer: Yes.

"Question: Where did you meet Antwan at?

"Answer: Second Street.

"Question: About what time?

"Answer: I can't say. After seven.

KOCZUR - DIRECT BY KOLANO

"Question: How long have you known Antwan?

"Answer: Six years.

"Question: Where did you meet him on Second Street?

"Answer: Between Second and Bond.

"Question: --

Q. Let me ask you, what happens at 2:45?

A. At that time we took a short break to use rest rooms and get a cup of coffee.

Q. Is that noted right there on the statement itself?

A. Yes, sir.

Q. When did the statement resume?

A. 2:50.

Q. Please continue.

A. "Question: To the best of your recollection, where does Antwan live.

"Answer: Third court, first floor, Pioneer Homes.

"Question: How old is Antwan?

"Answer: Twenty.

"Question: How tall is he?

"Answer: About five, ten.

"Question: How heavy is he?

"One seventy.

"Question: What type of hair does he have?

"Answer: Braids.

"Question: Does he have any facial hair?

KOCZUR - DIRECT BY KOLANO

1 "Answer: Beard.

2 "Question: When you met him was he with anyone  
3 else?

4 "Answer: Yes. But I don't know his name. He is  
5 from Carteret.

6 "Question: Why were the three of you getting  
7 together?

8 "Answer: We was just walking.

9 "Question: Where were you walking to?

10 "Answer: Court Street on the bridge.

11 "Question: What were you looking to do?

12 "Answer: They were looking to rob somebody.

13 "Question: Were you looking to rob somebody?

14 "Answer: No.

15 "Question: Did anything unusual happen under the  
16 bridge?

17 "Answer: They wanted me to hold the gun.

18 "Question: Who wanted you to hold the gun?

19 "Answer: Antwan.

20 "Question: Why did he want you to hold the gun?

21 "Answer: Because he wanted to put it back --

22 "Because he wanted to put it in my pocket. And I  
23 said No.

24 "Question: What type of gun was it?

25 "Answer: 380.

KOCZUR - DIRECT BY KOLANO

31

1 "Question: What color was it?

2 "Answer: Black.

3 "Question: Did you ever handle that gun?

4 "Answer: No.

5 "Question: From the bridge under Court Street when  
6 he showed you the gun where did the three of you go then?

7 "Answer: We went straight to Alexian Brothers.

8 "Question: What happened at Alexian Brothers?

9 "Answer: At first we was walking fast. Then we  
10 slowed down. Then he said he told me he and his boy to come  
11 on. Then he seen this man who owned the liquor store and he,  
12 and then he told him to empty his pockets. The man said no,  
13 then Antwan tried to go into his pockets. Then they started  
14 fighting. The man threw a punch at Antwan, and then Antwan  
15 threw a punch back. Then Antwan pushed him, then he shot him.  
16 The man fell. Antwan went into his pockets. He then told me  
17 to go into his pockets. I said no. He then called me a punk.  
18 Then I was in shock. He then snatched me and he told me come  
19 on. We then went straight up Second, cut through Court. I  
20 turned and ran over Mag, and Antwan ran straight over Court."

21 Q. When you say Mag, Magnolia Avenue?

22 A. Yes, sir.

23 "Question: He then ran through the field at Court  
24 Street.

25 "Question: When you were walking from the bridge to



KOCZUR - DIRECT BY KOLANO

32

1 the time you got to the liquor store did Antwan discuss about  
2 who he was going to rob?

3 "Answer: No.

4 "Question: Did you look at other people along the  
5 way to see if Antwan wanted to rob them?

6 "Answer: He wanted to rob another person, but he  
7 got in the car, he was too fast.

8 "Question: And where did this happen?

9 "Answer: New Point Road.

10 "Question: When was it decided that the man that  
11 was shot was going to be robbed?

12 "Answer: As we were just walking up Seventh we got  
13 to the Chinese restaurant and Antwan told me to stand by.

14 "Question: What was Antwan wearing at this time?

15 "Answer: Tomy Hilfiger jacket, royal blue, but it  
16 was turned inside out so it was gold.

17 "Question: How long was that coat.

18 "Answer: About to his thigh. He had it tucked  
19 under his waist.

20 "Question: When did he turn the coat inside out?

21 "Answer: When he was walking under the bridge.

22 "Question: Did you or the boy from Carteret alter  
23 your clothing at all?

24 "Answer: No.

25 "Question: When you first approached Chinese store,

KOCZUR - DIRECT BY KOLANO

1 when did you first see the man that was shot?

2 "Answer: As he was going in the driveway, picking  
3 up garbage.

4 "Question: How far away were you from Antwan when  
5 he shot this man?

6 "Answer: About five feet.

7 "Question: How many shots were fired.

8 "Answer: Two. But I think the first one missed  
9 him.

10 "Question: What makes you think the first one  
11 missed him?

12 "Answer: Because when the second shot went off the  
13 man fell. The first time he didn't fall.

14 "Question: Did you see where the man was struck  
15 with the bullet?

16 "Answer: I couldn't see, I was in shock.

17 "Question: Did Antwan use his right hand or left  
18 hand?

19 "Answer: Right hand.

20 "Question: When Antwan pointed the gun at the man  
21 what part of the man's body was Antwan aiming at?

22 "Answer: It was to his chest.

23 "Question: How far away was the gun when it went  
24 off to the man's body?

25 "Answer: About one foot.

KOCZUR - DIRECT BY KOLANO

1 "Question: Did you see Antwan remove anything from  
2 the man's pockets?

3 "Answer: Yes.

4 "Question: Was this before or after he was shot?

5 "Answer: After he was shot.

6 "Question: Which pocket did Antwan go through?

7 "Answer: I seen him in his front pockets.

8 "Question: Did he remove anything from the man's  
9 pockets?

10 "Answer: I seen something, but I don't know what it  
11 was.

12 "Question: Earlier in the interview you stated you  
13 saw Antwan remove a wallet. Is that correct?

14 "Answer: Yes.

15 "And where did he take that wallet from?

16 "Answer: I think his right back pocket.

17 "Question: Was there any money in that wallet?

18 "Answer: I don't know.

19 "Question: Have you ever visited that liquor store  
20 before this incident?

21 "Answer: No.

22 "Question: Did you ever touch this man while he was  
23 on the ground?

24 "Answer: No.

25 "Question: Was the gun an automatic or revolver?

KOCZUR - DIRECT BY KOLANO

1 "Answer: Revolver.

2 "Question: What were the lighting streets -- excuse  
3 me.

4 "Question: Were the lighting, street lights on at  
5 that time?

6 "Answer: The street lights were on.

7 "Question: What was the weather like?

8 "Answer: It was good.

9 "Question: Approximately how long a time did this  
10 robbery take place from the time the three of you approached  
11 this man to the time that you fled?

12 "Answer: I don't know.

13 "Question: How many other people were on the street  
14 at this time?

15 "Answer: Two people coming up the street.

16 "Question: Besides Antwan and the friend from  
17 Carteret was there anyone else at the scene that you know?

18 "Answer: No.

19 "Question: As you were running from the scene which  
20 way did you flee?

21 "Answer: Straight up Seventh, turned by Court.

22 "Question: Where was the gun at this time?

23 "Answer: Still with Antwan.

24 "Question: Where was the wallet at this time?

25 "Answer: Antwan was emptying it as he threw it.

KOCZUR - DIRECT BY KOLANO

36

1 "Question: Where did he throw the wallet?

2 "Answer: Towards court under a car.

3 "Question: As they were running did Antwan remove  
4 any money from the wallet?

5 "Answer: I don't know. I was busy running.

6 "Question: Did you ever touch that wallet?

7 "Answer: No.

8 "Question: Where did you run to?

9 "Answer: Straight up Court, and made a left, then  
10 made a right to Magnolia, then I ran home.

11 "Question: Where did Antwan run?

12 "Answer: Straight up Court, going downtown.

13 "Question: The last time you saw him was he running  
14 by himself?

15 "Answer: No. The boy from Carteret was with him.

16 "Question: How old was the boy from Carteret?

17 "Answer: About sixteen, seventeen.

18 "Question: How many times have you met him before  
19 this robbery.

20 "Answer: Once.

21 "Question: What do you call him?

22 "Answer: I forgot what I called him.

23 "Question: What does Antwan call him?

24 "Answer: A funny name, Boz, something like that.

25 "Question: How does this boy from Carteret get to

KOCZUR - DIRECT BY KOLANO

37

1 Elizabeth?

2 "Answer: He got a ride from his brother.

3 "Question: What is his brother's name?

4 "Answer: I don't know.

5 "Question: What type of car does he drive?

6 "Answer: Honda Civic, royal blue.

7 "Question: What's his brother's name?

8 "Answer: I don't know.

9 "Question: How do you know his brother drove him to

10 Elizabeth?

11 "Answer: He told Antwan that was his brother.

12 "Question: Where did you see him drop him off at?

13 "Answer: At the corner of Third and Bond.

14 "Question: When you left under the bridge on Court

15 your intention was to rob somebody, is that correct?

16 "Answer: No.

17 "Then why didn't you go home?

18 "Answer: He said let's take a walk, and he will

19 drop me back off home.

20 "Question: Did you walk past your home?

21 "Answer: Yes.

22 "Question: Why didn't you go home?

23 "Answer: Because he told me to come to the Chinese

24 store and he dropped me back home.

25 "Question: When was this, before or after he was

KOCZUR - DIRECT BY KOLANO

38

1 going to rob the guy on New Point Road?

2 "Answer: After.

3 "Question: After you left your house, is that when  
4 the robbery was going to happen on New Point Road?

5 "Answer: Yes.

6 "Question: When the robbery was going to take place  
7 on New Point Road."

8 Excuse me.

9 "Question: When was the robbery going to take place  
10 on New Point Road?

11 "Answer: Before we passed my house.

12 "Question: Why did you think Antwan wanted to keep  
13 walking?

14 "Answer: He told me he was going to the Chinese  
15 store.

16 "Question: Did you think he was going to rob  
17 anybody?

18 "Answer: No.

19 "Question: Why not?

20 "Answer: I just didn't think he was going to do it.

21 "Question: At the time of the shooting what were  
22 you wearing.

23 "Answer: Black army pants, jacket I am wearing now,  
24 and black sneakers.

25 "Question: And this is the same jacket and the same

KOCZUR - DIRECT BY KOLANO

1 shoes that you were wearing, correct?

2 "Answer: Yes.

3 "Question: Where are the pants that you were  
4 wearing?

5 "Answer: At home.

6 "Question: Where in your home?

7 "Answer: In my closet.

8 "Question: Were you wearing a hat during this?

9 "Answer: Yes. I have it with me today.

10 "Question: After the robbery and shooting did you  
11 speak to Antwan in regards to what happened?

12 "Answer: No.

13 "Question: Where did this take place at?

14 "Answer: When he was running.

15 "Question: Did you speak to Antwan yesterday?

16 "Answer: Yes.

17 "Question: How many times.

18 "Answer: Just a couple of words on Second, between  
19 Second and Bond.

20 "Question: What time?

21 "Answer: Afternoon.

22 "Question: What was said?

23 "Answer: He was like, he said If you say anything I  
24 will kill you. And I thought he was just joking, and he said  
25 he wasn't.



KOCZUR - DIRECT BY KOLANO

40

1 "Question: Is this the only time you spoke to  
2 Antwan since the shooting?

3 "Answer: Yes.

4 "Question: What is your girlfriend's name.

5 "Answer: Sharlama.

6 "Question: Did you tell Sharlama that you shot the  
7 man by accident?

8 "Answer: Yes.

9 "Question: Why did you say that?

10 "Answer: Because Antwan told me to say it. Then he  
11 said if I didn't he would kill me.

12 "Question: The boy from Carteret, what was he  
13 wearing at the time.

14 "Answer: A black Columbia jacket, purple around the  
15 neck, light blue jeans, brown Timberlines.

16 "Question: The pants you were wearing that are  
17 hanging in the closet that you wore at the time of homicide,  
18 did you wash them yet?

19 "Answer: No.

20 "Question: How were you treated by members of the  
21 Elizabeth Police Department?

22 "Answer: You treated me right.

23 "Question: Were you abused by any member of the  
24 Elizabeth Police Department?

25 "Answer: No.

KOCZUR - DIRECT BY KOLANO

1 "Question: Were you able to use the rest room?

2 "Answer: Yes.

3 "When you were hungry, did we stop this interview  
4 and provide you a lunch?

5 "Answer: Yes.

6 "Question: In the event that you had to contact  
7 Antwan how would you reach him?

8 "Answer: Pager.

9 "Question: What is his pager number?

10 "Answer: I don't know it by heart.

11 "Question: Do you have that number written down  
12 anywhere?

13 "Answer: Yeah. In my bag at home.

14 "Question: Do you have any objections, keeping your  
15 constitutional rights in mind, that this detective and members  
16 of the Elizabeth Police Department recover the pager from the  
17 plastic bag and recover the pants that you were wearing at the  
18 time of this homicide.

19 "Answer: No objection.

20 "Question: Is there anything else you would like to  
21 add to this statement?

22 "Answer: No.

23 "Question: After reading this statement, and find  
24 it correct, will you sign it as a true, free, and voluntary  
25 statement?

KOCZUR - DIRECT BY KOLANO

1 "This statement was done in the presence of Marvin  
2 Mathis' mother Linda Mathis.

3 "Answer: Yes."

4 Q. Detective, at that point in time is this statement  
5 given to Mr. Marvin Mathis and his mother for an opportunity to  
6 read it and review it and make any changes that they would  
7 like?

8 A. Yes, it was.

9 Q. And did they appear to read it?

10 A. Yes, they did.

11 Q. At the bottom of each page are the initials MM. Who  
12 put those there?

13 A. Marvin Mathis.

14 Q. Were you present when he put them there at the bottom  
15 of each page?

16 A. Yes, I was.

17 Q. After they had the opportunity to read the statement,  
18 both he and his mother, did you ask him to sign the statement?

19 A. Yes, I did.

20 Q. Did he sign the statement?

21 A. Yes, he did.

22 Q. And the signature right below that, whose is that?

23 A. That is my signature.

24 Q. Did you witness him sign that signature?

25 A. Yes.

KOCZUR - DIRECT BY KOLANO

43

1 Q. There is also another signature on that page right  
2 below yours, whose is that?

3 A. Linda Mathis.

4 Q. His mother was present during this entire statement  
5 that you just read to us?

6 A. Yes, she was.

7 Q. And you also had her sign it since she was present and  
8 as a witness that this was all true and accurate at least as to  
9 the words said by the defendant?

10 A. That is correct.

11 Q. And was Mr. Marvin Mathis administered an oath by a  
12 notary prior to signing this statement?

13 A. Yes.

14 Q. Swearing to the truthfulness of this?

15 A. Yes, sir, he was.

16 Q. By whom?

17 A. Lydia Martinez.

18 Q. Now, sir, if you would, please, I am going to refer  
19 you to page four in this statement, and you read that, you  
20 asked what Antwan was wearing: Tomy Hilfiger jacket, royal  
21 blue, but it was turned inside out so it was gold?

22 A. Yes, sir.

23 Q. Subsequent, after this statement was given, and some  
24 other developments, was a search warrant executed in Carteret? ✓

25 A. Yes, sir, it was.

KOCZUR - DIRECT BY KOLANO

44

1 Q. And you did not participate in that search warrant?

2 A. No, sir, I did not.

3 Q. However, did you receive the items from that search  
4 warrant?

5 A. Yes, sir, I did.

6 Q. Sir, showing you what has been marked S-26 for  
7 identification, I ask you to look at this and indicate whether  
8 or not you recognize it?

9 A. Yes, sir, I do.

10 Q. And what is this?

11 A. This is the coat that was recovered by Detective Furda in  
12 Carteret and turned over to me.

13 Q. This was turned over to you on what date?

14 A. 1/26/96.

15 Q. Two days after defendant Marvin Mathis gave his  
16 statement?

17 A. Yes, sir.

18 Q. In his statement he indicates to you that Antwan was  
19 wearing a blue Tomy Hilfiger jacket and gold inside?

20 A. Yes, sir.

21 Q. And does this fit the description given by the  
22 defendant at that time?

23 A. Yes, it does.

24 Q. First person to ever mention Antwan in reference to  
25 this case was whom?

KOCZUR - DIRECT BY KOLANO

45

1 A. Sharlama Brooks.

2 Q. And second person to mention Antwan?

3 A. That was Marvin Mathis.

4 Q. Other than those two people you had no information up  
5 until Sharlama Brooks came to you that morning and mentioned  
6 the name Marvin Mathis and Antwan?

7 A. Yes, sir.

8 Q. Did you have any knowledge of this color jacket from  
9 anyone other than Marvin Mathis?

10 A. No, sir.

11 Q. Now, if you would, please turn to page eight of that  
12 statement. And there is also a description of the clothing  
13 that Marvin Mathis said that he was wearing at the time.

14 A. Yes, sir.

15 Q. Okay. It says that he was wearing a black jacket?

16 A. Yes, he was.

17 Q. And did you seize that black jacket sometime that day  
18 while were you interviewing Marvin Mathis?

19 A. Yes, I did.

20 Q. I am going to show you the tag. Do you recognize that  
21 tag?

22 A. Yes, sir, I do.

23 Q. Whose writing is that in the black ink?

24 A. This is my writing.

25 Q. When did you take this item from Mr. Mathis?

KOCZUR - DIRECT BY KOLANO

46

1 A. 1/24/96.

2 Q. And he indicated it was a First Down black jacket?

3 A. Yes.

4 Q. This jacket, unlike other jacket, if it were turned  
5 inside would be black on both sides?

6 A. Yes, sir.

7 Q. You also indicated that he had on a, or he indicated  
8 that he had on a pair of black shoes at the time of the  
9 shooting?

10 A. Yes, sir.

11 Q. Did you also take those?

12 A. Yes, I did.

13 Q. I am going to show you what has been marked S-32 for  
14 identification. I ask you to look at it. Look at the tag  
15 specifically and indicate whether or not you recognize that?

16 A. Yes, I do. This is my tag with my writing, and these were  
17 the sneakers that were taken from Marvin Mathis on 1/24/96.

18 Q. He also indicated that he was wearing a hat?

19 A. Yes, he was.

20 Q. Did you take that hat?

21 A. Yes, I did.

22 Q. I am going to show you what has been marked S-29 for  
23 identification and ask you to look at it. Do you recognize  
24 that?

25 A. Yes, I do.

KOCZUR - DIRECT BY KOLANO

47

1 Q. What is that?

2 A. This is my label that I put on with my handwriting, and  
3 this is the hat I have taken from Marvin Mathis 1/24/96.

4 Q. Dated as such?

5 A. Yes, sir, it is.

6 Q. When you took the jacket did you find anything in the  
7 pockets?

8 A. Yes, sir, I did.

9 Q. What did you find?

10 A. Pair of black gloves.

11 Q. Showing you what's marked S-33 for identification, I  
12 ask you to look at it and indicate whether or not you recognize  
13 it?

14 A. Yes, I do.

15 Q. What is that?

16 A. This is the label that I placed on these gloves. My  
17 handwriting. Dated 1/24/96. And these are the gloves that I  
18 have taken from the coat jacket of Marvin Mathis.

19 Q. Now, Mr. Mathis also indicated in his original  
20 statement that he was wearing a pair of black pants?

21 A. Yes, sir.

22 Q. Now, I may be jumping ahead, but was something done to -  
23 I think you said in the statement you asked him if he would  
24 consent to going to the house and get the pager and black  
25 pants?



KOCZUR - DIRECT BY KOLANO

48

1 A. Yes, sir.

2 Q. Who went to the house?

3 A. Detective John Furda and Linda Mathis.

4 Q. Did Detective Furda return with something for you?

5 A. Yes, he did.

6 Q. Was the beeper ever found?

7 A. No, sir.

8 Q. Showing you what has been marked S-31 for  
9 identification. I think you described them as combat pants?

10 A. Yes, sir.

11 Q. Showing you what's marked S-31, do you recognize  
12 these?

13 A. Yes, I do.

14 Q. What are these?

15 A. These are pants Detective Furda turned over to me. They  
16 were taken from Marvin Mathis' home.

17 Q. Did these fit the description, being black combat  
18 pants?

19 A. Yes, they do.

20 Q. Did you have Mr. or request of Mr. Mathis and his  
21 mother to sign a form giving their free and voluntary  
22 permission to go to the house and search for these items?

23 A. Yes, I did.

24 Q. Now, I am going to show you what's marked S-18 for  
25 identification. I ask you to look at it. Do you recognize

KOCZUR - DIRECT BY KOLANO

49

1 that?

2 A. Yes, sir, I do.

3 Q. What is that?

4 A. This is the Elizabeth Police Department consent to search  
5 form. And this is the form that I had Marvin Mathis and his  
6 mother both sign on 1/24/96 to search and recover the items  
7 from Marvin Mathis' home.

8 Q. Does this form indicate that you were seeking  
9 permission and also tell them in writing that they have a right  
10 to say no?

11 A. That is correct.

12 Q. And they had no objection to signing this form and  
13 going -- ?

14 A. No, they did not.

15 Q. In fact Miss Mathis voluntarily accompanied the  
16 detective and turned it over to him?

17 A. Yes, she did.

18 Q. Whose signature appears here?

19 A. Marvin Mathis.

20 Q. Whose signature appears here?

21 A. Linda Mathis.

22 Q. What date?

23 A. 1/24/96.

24 Q. What time was this form executed?

25 A. 4:15 p.m.

KOCZUR - DIRECT BY KOLANO

50

1 Q. And that was at the conclusion of the written  
2 statement?

3 A. Yes, sir.

4 Q. Or first written statement?

5 A. Yes, sir.

6 Q. Now, after you had this first written statement, and  
7 this person from Carteret and Antwan Harvey's name, did you  
8 believe it?

9 A. No, sir.

10 Q. Why not? And what did you do as a result of that?

11 MR. FLORCZAK: I object. I don't see the relevance  
12 why he believes something.

13 Q. What did you do as a result of receiving this  
14 statement?

15 A. At that time I met with other investigators and I met with  
16 the Union County Prosecutor's office to see if I had enough for  
17 a complaint approval.

18 Q. From there where did you go?

19 A. From the prosecutor's office?

20 Q. Yes.

21 A. Back to Elizabeth Police Department.

22 Q. And what did you do when you went back?

23 A. At that time I requested Linda Mathis' permission to speak  
24 to her son again.

25 Q. Did she come back with Detective Furda with black

KOCZUR - DIRECT BY KOLANO

51

1 pants?

2 A. Yes.

3 Q. Was she still cooperative?

4 A. Very.

5 Q. And was Mr. Mathis still cooperative in that he was  
6 willing to speak with you freely and voluntarily?

7 A. Yes, he was.

8 Q. What did you explain to him as to what you believed or  
9 didn't believe in his first statement?

10 A. I told him I didn't believe, a whole lot of the statement  
11 didn't make sense, especially with the statement of Sharlama  
12 Brooks.

13 Q. And did you conduct another oral interview of him?

14 A. Yes, I did.

15 Q. And during that oral interview did he then tell you  
16 that now he was going to tell you the truth?

17 A. Yes, sir.

18 Q. And what did he say in this oral interview?

19 A. At that time he changed his story saying that he was out  
20 during the robbery, and that there was a struggle over the gun  
21 at East Jersey Street where the victim was shot.

22 Q. And was his mother present during this oral interview?

23 A. Yes.

24 Q. And prior to your conducting the second oral interview  
25 did you do anything regarding his rights?

KOCZUR - DIRECT BY KOLANO

52

1 A. Yes, I did.

2 Q. What did you do?

3 A. I Mirandized him a second time.

4 Q. Showing you what has been marked S-3 for  
5 identification. I ask you to look at it and indicate whether  
6 or not you recognize it?

7 A. Yes, sir, I do.

8 Q. And what is that?

9 A. This is the second Miranda form that was filled out, that I  
10 used.

11 And this is Marvin Mathis' Miranda of Elizabeth Police  
12 Department advisement of constitutional rights form that was  
13 signed by Marvin Mathis and his mother.

14 Q. Why did you get a second one when he had already  
15 signed off on the first one?

16 A. It was several hours between first one and second one.

17 I wanted to make sure there was no question in anybody's  
18 mind that he still understood his rights and still wanted to  
19 continue.

20 Q. After the written statement, first written statement,  
21 you indicated consent form was signed at 4:15?

22 A. Yes, sir.

23 Q. I think you indicated you went to the prosecutor's  
24 office?

25 A. Yes, sir, I did.

KOCZUR - DIRECT BY KOLANO

53

1 Q. And Detective Furda went where?

2 A. He went to 538 Magnolia Avenue, home of Linda and Marvin  
3 Mathis.

4 Q. With whom? Who did he go with?

5 A. Linda Mathis.

6 Q. And during this time what direction or what did you  
7 tell Marvin Mathis to do while he was still at headquarters?

8 A. I made arrangements for Marvin Mathis to sit in the  
9 conference room and look through the black male identification  
10 books attempting to identify Antwan.

11 Q. So he was left sitting in a room looking through whole  
12 bunch of books see if he could find Antwan's picture?

13 A. Yes.

14 Q. During that time -- you are the case detective --  
15 nobody spoke to him in any way, shape, or form, other than for  
16 basics, going to the bathroom?

17 A. That is correct.

18 Q. As you did the second Miranda form, did you do it the  
19 same way as the first form?

20 A. Yes, sir, I did.

21 Q. There are initials after each of the rights.

22 You have a right to remain silent. Do you understand this?

23 And the initials MM. Is that true of all of the five rights?

24 A. Yes, sir.

25 Q. Who put the initials MM there?

KOCZUR - DIRECT BY KOLANO

54

1 A. Marvin Mathis.

2 Q. You witnessed that?

3 A. Yes, sir.

4 Q. And the waiver portion, there is a signature here,  
5 whose is that?

6 A. That's Marvin Mathis'.

7 Q. There is a signature witness right below that?

8 A. His mother's, yes.

9 Q. Linda Mathis?

10 A. Yes.

11 Q. And this form was from 5:45 to 5:46?

12 A. Yes, sir.

13 Q. You were advising officer?

14 A. Yes, I was.

15 Q. And again as it relates to a watch, it was either  
16 somebody else or you poked your head out?

17 A. That's correct.

18 Q. And did both Marvin Mathis and his mother indicate  
19 that they were willing to speak further?

20 A. Yes, they were.

21 Q. And you indicated he gave you the oral statement where  
22 now he admitted his or at least his version of what he had  
23 done?

24 MR. FLORCZAK: Judge, I object to the leading nature  
25 of the question.

KOCZUR - DIRECT BY KOLANO

55

1 MR. KOLANO: This has been covered.

2 MR. FLORCZAK: Then I object to the repetition.

3 THE COURT: I will sustain the objection.

4 Q. Did you take a second written statement?

5 A. Yes, sir, I did.

6 Q. Was Miss Mathis present for the entire written, second  
7 written statement?

8 A. Yes, she was.

9 Q. Showing you what has been marked S-4 for  
10 identification. I ask you to look at it and indicate whether  
11 or not you recognize it.

12 A. Yes, sir. This is a statement that was given to me by  
13 Marvin Mathis in the presence of his mother Linda Mathis on  
14 1/24/96.

15 Q. And who was the notary on this?

16 A. Lydia Martinez.

17 Q. Who was the typist?

18 A. Lydia Martinez.

19 Q. Would you please, again, read that statement in its  
20 entirety slowly and clearly indicating where there is a  
21 question and there is an answer.

22 A. "Question: Marvin, I am Detective Koczur of the Elizabeth  
23 Police Department, and I am going to ask you some more  
24 questions in regard to this homicide investigation. Are you  
25 willing to answer my questions truthfully and to the best of



KOCZUR - DIRECT BY KOLANO

56

1 your knowledge?

2 "Answer: Yes.

3 "Question: At approximately -- excuse me.

4 "Question: At approximately 5:40 p.m. this evening  
5 did your mother Linda and I enter the interview room and inform  
6 you that I would like to speak to you again. Is that correct?

7 "Answer: Yes.

8 "Question: And you informed us that you wished to  
9 speak to us, is that correct?

10 "Answer: Yes.

11 "Question: Marvin, I then advised you of your  
12 Miranda rights, is that correct?

13 "Answer: Yes.

14 "Question: Did you understand your Miranda rights  
15 at that time?

16 "Answer: Yes.

17 "Question: And with your constitutional rights in  
18 mind, did you make statements regarding this homicide?

19 "Answer: Yes.

20 "Question: At this time do you wish to continue by  
21 giving a typewritten sworn statement?

22 "Answer: Yes.

23 "Question: Marvin, when did you first meet Antwan  
24 the evening of the shooting?

25 "Answer: About eight o'clock.

✓

KOCZUR - DIRECT BY KOLANO

57

1 "Question: Where was that at?

2 "Answer: Third and Bond.

3 "Question: And was that at the corner?

4 "Answer: Yes.

5 "Question: Were you alone at that time?

6 "Answer: Yes.

7 "Question: Did you meet up with anyone else?

8 "Answer: Yes.

9 "Question: Where was that at?

10 "Answer: Third and Bond at the Chinese store.

11 "Question: Do you know who these girls were?

12 "Answer: Yes.

13 "Question: Who are they?

14 "Answer: One was April Diggs.

15 "Question: How long have you known April Diggs?

16 "Answer: For two years.

17 "Question: Do you know the other girl's name?

18 "Answer: No. But it will come to me."

19 Q. Let me interrupt you there, detective.

20 In the oral interview prior to this written statement did  
21 the defendant ever mention April Diggs or the presence of two  
22 girls?

23 A. This is the first time he ever mentioned anything about any  
24 girls.

25 Q. You were already into the process of taking verbatim

KOCZUR - DIRECT BY KOLANO

58

1 statement with the typist?

2 A. Yes, sir.

3 Q. You just continue from there.

4 A. Yes, sir.

5 Q. Okay. Please continue reading.

6 A. "Question: What did the four of you discuss in front of  
7 the Chinese restaurant?

8 "Answer: To go to the Avenue.

9 "Question: In the second interview after 5:45, you  
10 stated to me in the presence of your mother before this  
11 attempted robbery and robbery and homicide you intended to rob  
12 people with Antwan. Is that correct?

13 "Answer: Yes."

14 Q. And did he in fact admit that in the oral interview  
15 prior to this written statement?

16 A. Yes, he did.

17 Q. In front of his mother?

18 A. Yes.

19 Q. Please continue.

20 A. "Question: Why wasn't the deli robbed?

21 "Answer: Because I told him I wasn't going to do  
22 it.

23 "Question: --"

24 Q. I think you missed page two.

25 MR. FLORCZAK: I am sorry. Page two is missing from

KOCZUR - DIRECT BY KOLANO

59

1 the document?

2 THE WITNESS: Yes, sir, it is.

3 (Pause)

4 MR. KOLANO: Walter. (Pause).

5 Your Honor, with no objection, I have a clean copy. I  
6 will ask that we can remove the staple and attach this as page  
7 two. Mr. Florczak agrees this is the actual page two.

8 Q. I apologize.

9 A. Page two, sir?

10 Q. Yes.

11 A. "Question: Was it your intention, intention of Antwan, and  
12 the intention of April Diggs and the other female to rob anyone  
13 on Elizabeth Avenue?

14 "Answer: Yes.

15 "Question: On Elizabeth Avenue was anyone in  
16 possession of a handgun?

17 "Answer: Yes.

18 "Question: How do you know Antwan was in possession  
19 of a handgun?

20 "Answer: Because he showed it to me.

21 "Question: Where did he show you the gun at?

22 "Answer: When he was walking up the Avenue.

23 "Question: Did he discuss with you and the other  
24 girls about doing a robbery?

25 "Answer: Yes.

KOCZUR - DIRECT BY KOLANO

60

1 "Question: What type of gun did he have?

2 "Answer: A black revolver, the kind that cocks  
3 back.

4 "Question: When you were walking up the Avenue did  
5 there come a point in time when someone suggested who to rob?

6 "Answer: Antwan.

7 "And where was that at?

8 "Answer: On Elizabeth Avenue, across the street  
9 from the gas station, where that statue is at.

10 "Question: Did Antwan tell you that you were going  
11 to do during this robbery?

12 Q. Does it say what did -- ?

13 A. Yes.

14 "What did Antwan tell you that you were to do during  
15 this robbery?

16 "Answer: He asked me to be a lookout.

17 "Question: What did he ask the girls to do?

18 "Answer: He asked the girls to see if that man had  
19 any gold on him.

20 "Question: Why was this robbery not carried out?

21 "Answer: Because I told him not to do it.

22 "Question: Did you leave the area right there and  
23 then?

24 "Answer: No.

25 "Question: Why?

KOCZUR - DIRECT BY KOLANO

61

1 "Because April noticed a small deli on the corner  
2 and the man was there alone.

3 "Why wasn't the deli robbed?

4 "Answer: Because I told him I wasn't going to do  
5 it.

6 "Question: You then left the area of Elizabeth  
7 Avenue by Third?

8 "Answer: Yes.

9 "Question: Earlier, before this written statement,  
10 do you recall telling this detective and your mother that you  
11 and Antwan were looking to rob someone else because you wanted  
12 to know how it felt?

13 "Answer: Yes."

14 Q. Did he in fact say that in the oral interview?

15 A. Yes. He did.

16 Q. Please continue.

17 A. "Question: When you were walking up Elizabeth Avenue were  
18 you and Antwan and the girls looking to rob someone?

19 "Answer: Yes.

20 "Question: Did there come a point in time when the  
21 four of you decided to rob someone else?

22 "Answer: Yes.

23 "Question: And where was that at?

24 "Answer: Elizabeth Avenue and Sixth Street.

25 "Question: What happened then?

KOCZUR - DIRECT BY KOLANO

62

1 "Answer: Antwan saw two Spanish boys, and Antwan  
2 and April started running after them real hard, and me and the  
3 other girl jogged after them.

4 "Question: Which way did they run on Sixth Street?

5 "Answer: We all went towards First Avenue, but they  
6 outran us.

7 "Question: Where did you go after this?

8 "Answer: We went straight up the Avenue and made a  
9 right on to New Point Road.

10 "Question: What happened then?

11 "Answer: We started walking towards East Jersey  
12 Street.

13 "Question: Was it still your intention at this time  
14 to continue doing a robbery?

15 "No.

16 "Question: Did there come a point in time when you  
17 came to the intersection of Seventh and East Jersey Street, and  
18 on that corner is the Chinese restaurant, is that correct?

19 "Answer: Yes.

20 "Question: Marvin, when did you first meet Antwan  
21 the evening of the shooting?

22 "Answer: About eight o'clock.

23 "Question: What did Antwan tell you at this time?

24 "Answer: He was going to rob this guy, and he asked  
25 me to watch out.

KOCZUR - DIRECT BY KOLANO

63

1 "Question: Who did he want you to watch out for?

2 "Answer: The cops.

3 "Question: Did you do that for him?

4 "Answer: Yes.

5 "Question: And you knew he was going to rob this  
6 man, is that correct?

7 "Answer: Yes.

8 "Question: And you did not stop him from doing this  
9 robbery?

10 "Answer: No.

11 "Question: Where was April at this time?

12 "Answer: Next to Antwan.

13 "Question: What did April do during this robbery?

14 "Answer: She was also a lookout.

15 "Question: Where was the other girl?

16 "Answer: She was standing next to me. Now I  
17 remember, her name is Renee."

18 Q. That's the first time you heard the name Renee in this  
19 investigation?

20 A. Yes, sir.

21 Q. And it was while you were at this point in the written  
22 statement?

23 A. Yes, sir.

24 Q. Please continue.

25 A. "Question: What happened between you, Antwan, and the man



KOCZUR - DIRECT BY KOLANO

64

1 that was shot?

2 "Answer: As we walked up to the guy --"

3 Q. I am sorry. Does it say --

4 Would you please read that?

5 A. "Question: What happened between you, Antwan, and the man  
6 that was shot?

7 "Answer: We walked up to the guy. Antwan grabbed  
8 him, and he tried going into his pockets. Then the man slapped  
9 Antwan's hand from going into his pockets. Antwan grabbed the  
10 man and the man grabbed Antwan. The man then threw a punch at  
11 Antwan. Then Antwan threw a punch back at him. Then Antwan  
12 pushed the man off him and he took the gun and shot him."

13 Q. Just to clarify, that answer starts We walked up to  
14 the guy?

15 A. We walked up to the guy. Yes, sir.

16 Q. Please continue with the next question.

17 A. "Question: After the shots went off and the man fell to  
18 the ground who went through his pockets?

19 "Answer: Antwan.

20 "Question: Did you ever touch that man?

21 "Answer: No.

22 "Question: Did either of the two girls touch or  
23 strike that man?

24 "Answer: No."

25 Q. Next page starts with when Antwan -- ?

KOCZUR - DIRECT BY KOLANO

65

1 A. "Question: When Antwan pulled out his gun and pointed it  
2 at the man did the man grab his gun?

3 "Answer: Yes.

4 "Question: And were the two of them struggling over  
5 the gun?

6 "Answer: Yes.

7 "Question: And you attempted to help Antwan, is  
8 that correct?

9 "Answer: No. I didn't want him to shoot that man.

10 "Question: How did the gun go off?

11 "Answer: When all three of us were struggling for  
12 the gun.

13 "Question: How long did the struggle take place?

14 "Answer: Not that long.

15 "Question: When the gun went off where was it  
16 pointed at?

17 "Answer: His forehead.

18 "Question: How far away was the gun from this man's  
19 forehead?

20 "Answer: About one or two feet.

21 "Question: How many shots were fired?

22 "Answer: Two shots, but the first one missed him.

23 "Question: What was Antwan's intentions -- "

24 Scratch that.

25 "Question: Was Antwan's intention to shoot this

KOCZUR - DIRECT BY KOLANO

66

1 man?

2 "Answer: I don't think so.

3 "Question: When the gun went off, did any shell  
4 casings come out?

5 "Answer: Yes.

6 "Question: Where did you go right after the  
7 shooting?

8 "Answer: Me and Antwan ran down Seventh Street,  
9 like I told you before.

10 "Question: Did you speak to Renee since this  
11 shooting?

12 "Answer: No.

13 "Question: Did you speak to April since this  
14 shooting?

15 "Answer: No.

16 "Question: When the robbery of this man was  
17 discussed did April and Renee object to being the lookout?

18 "Answer: No.

19 "Question: So all four of you committed this  
20 robbery?"

21 MR. KOLANO: Was the answer on the bottom of the page?  
22 Is your copy cut off on the bottom?

23 MR. FLORCZAK: No. It's on the next page.

24 A. "Answer: Yes."

25 THE WITNESS: Where does the next page begin?

KOCZUR - DIRECT BY KOLANO

67

1 MR. KOLANO: I am sorry. Do you have the next page?

2 THE WITNESS: Next page boy from Carteret -- is that  
3 correct?

4 MR. FLORCZAK: No.

5 MR. KOLANO: Your Honor, perhaps we can take five  
6 minute break and just reorganize so we don't have to keep going  
7 through this.

8 THE COURT: All right. I am going to excuse the jury  
9 to the jury room for a few minutes.

10 Obviously, this exhibit needs to be, needs some work  
11 on it. So I will ask you to wait in the jury room. Should  
12 take just a few minutes.

13 Once we have the exhibit back together again we will  
14 have you back out.

15 (Jury withdrew from the courtroom.)

16 THE COURT: I received a note during the break from  
17 one of the jurors indicating that she recognizes someone who is  
18 seated in the courtroom -- this is the juror who was a high  
19 school teacher -- recognizes one of the summer interns who are,  
20 there are now four of them seated in the courtroom observing  
21 today's proceedings. And the juror just wanted us to know that  
22 she recognizes that person.

23 I discussed this with counsel and indicated that I  
24 would advise the jury that the people who are seated in the  
25 courtroom are interns observing today's proceedings, and not in

KOCZUR - DIRECT BY KOLANO

68

1 any way connected with the case or anyone involved in the case.

2 Bring the jurors back out, please.

3 (Jury seated in the jury box in the courtroom.)

4 THE COURT: Before we continue with the testimony of  
5 this witness, I have received an inquiry with respect to group  
6 of people who are in the courtroom, and I want to advise the  
7 jurors as to who these folks are.

8 You will notice that there are five young persons  
9 seated in the courtroom on the right side next to the last row.  
10 Those persons are working as summer interns this year, and they  
11 happen to be here today to observe the proceedings. They may  
12 be observing during the course of the trial today or some of  
13 the days next week.

14 I do want you to know these are not persons who have  
15 any connection whatsoever with this case nor with anybody  
16 involved in the case. They are simply, they are working here  
17 this summer and taking advantage of their time this morning by  
18 observing these proceedings. And you may see them or others  
19 from time to time during the course of the trial.

20 All right. Mr. Kolano, want to continue.

21 Q. Detect Koczur, I believe we have this document back in  
22 order. I am going to ask you to pick up from this question  
23 here on page six, and that answer.

24 A. "Did you speak to Renee since this shooting?

25 "Answer: No.

KOCZUR - DIRECT BY KOLANO

69

1 "Question: Did you speak to April since this  
2 shooting?

3 "Answer: No.

4 "Question: When the robbery of this man was  
5 discussed did April and Renee object to being a lookout?

6 "Answer: No.

7 "Question: So all four of you committed this  
8 robbery?

9 "Answer: Yes."

10 Q. On the bottom of this page, the word Yes does appear?

11 A. Yes, it does.

12 Q. Is that typed like every other question and answer?

13 A. No, it is not.

14 Q. Please turn the page over. What appears as the first  
15 answer there?

16 A. Answer: Yes.

17 Q. Now turn back. Can you please explain then why this  
18 is in handwriting and it says Yes?

19 A. Apparently when the statement was read over Marvin Mathis  
20 realized that the word A was the answer and the answer Yes  
21 wasn't there. He obviously placed his name, he obviously added  
22 the answer and placed the word Yes next to it.

23 Q. Right next to Yes are initials?

24 A. Yes, there are.

25 Q. Whose initials are those?

KOCZUR - DIRECT BY KOLANO

70

1 A. Marvin Mathis'.

2 Q. Whose initials are these to the right?

3 A. Marvin Mathis' also.

4 Q. This would be one that's generally done on the end of  
5 each page?

6 A. Yes, sir.

7 Q. These initials next to Yes are the ones where you tell  
8 somebody to make any changes and initial any changes they make?

9 A. That's correct.

10 Q. Marvin Mathis. So all of you committed this robbery?  
11 And he wrote A for answer and wrote Yes?

12 A. That is correct.

13 Q. And then initialed it?

14 A. Yes.

15 Q. Please go on the next page and continue reading.

16 A. "Question: How long have you known April?

17 "Answer: Two or three years.

18 "Question: How old was she?

19 "Answer: Sixteen going on seventeen.

20 "Question: Where does she live?

21 "Answer: First court, Pioneer Homes, I am not sure  
22 of the rest of the address.

23 "Question: How tall is she?

24 "Answer: About five foot six inches tall.

25 "Question: How heavy would you say she is?